IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 358 of 2001

CRA.107/1999 of ADDL.SESSIONS COURT, PARAVUR
CC.932/1994 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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REVN. PETITIONER/APPELLANT/ACCUSED

ANTONY PIOUS, S/O FRANCIS
KANAPPILLY HOUSE, PULLALIKKARA
NAD P.O.
ALUVA

BY ADV. SRI.M.M.SAIDU MUHAMMED

RESPONDENTS/COMPLAINANT AND STATE:

1. B.N.DEVADAS
HARIDAS BHAVAN
CHUTTUPADU KARA
EDAPPALLY P.O.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA

BY ADV. SRI.P.K.RAVISANKAR
PUBLIC PROSECUTOR ADV.SRI.AMJETH ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/12/2007, THE COURT ON 17/12/2007 PASSED THE FOLLOWING:

A.K.BASHEER, J.

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Crl.R.P.No.358 OF 2001

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Dated this the 17th day of December 2007

ORDER

Heard learned counsel for the petitioner and learned counsel for respondent no.1.

2. Petitioner is the accused in a prosecution under Section 138 of N.I. Act. He was concurrently found guilty by the trial court as well as the appellate court and convicted and sentenced thereunder.

3. While the trial court sentenced the petitioner to pay a fine of Rs.50,000 and in default to suffer simple imprisonment for three months, the appellate court in modification of the sentence, directed the petitioner to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for three months. However, the appellate court further directed the petitioner to pay compensation of Rs.40,000/- to the complainant under Section 357(3) Code of Criminal Procedure. The above order of the appellate court is under challenge in this revision petition.

4. The case of the complainant/respondent no.1 before the trial court was that the accused had issued Ext.P1 cheque dated July 12, 1994 for a sum of Rs.42,000/- towards repayment of the money borrowed by him from the complainant. When the cheque was presented for encashment, it was dishonoured for the reason that 'payment had been stopped' by the account holder/(accused). Though a statutory notice was issued by the complainant demanding payment, the accused had failed to discharge the liability. No reply was also sent. It was in the above circumstances that the complainant had launched the prosecution against the petitioner.

5. Before the trial court, the complainant was examined as PW1 and the manager of the bank was examined as PW2 and Exts.P1 to P7 were also marked on the side of the prosecution. Dws1 and 2 were examined and Exts.D1 and D2 were marked on the side of the defence. The trial court after evaluating the oral and documentary evidence on record found that the prosecution had succeeded in proving the charge against the petitioner under Section 138 of the Act. Accordingly, he was

convicted and sentenced. As mentioned earlier, the appellate court confirmed the order of conviction passed by the trial court. However, the sentence was modified.

6. It is contended by the learned counsel for the petitioner that the order of conviction and sentence imposed on the petitioner is legally unsustainable. I am unable to agree.

7. It was noticed by the trial court that the defence set up by the petitioner was that a blank cheque which he had lost along with an agreement for sale of immovable property entered with someone else, was misused by the complainant after forging his signature. As rightly noticed by the trial court, the petitioner had totally failed in substantiating the above contention. It had come on record that the petitioner had not taken any steps pursuant to the alleged loss of the blank cheque leaf. Though petitioner had been permitted to send the disputed signature for expert opinion, he had not taken any steps; nor had he produced any other document which contained his admitted signature for comparison. However, the learned Magistrate had compared the signature in Ext.P1

cheque with the other signatures of the accused in the court records. The learned Magistrate observed that petitioner had been putting his signature in different forms. In short, the learned Magistrate disbelieved the version given by the petitioner in his defence. The appellate court had re-evaluated the evidence meticulously. The prosecution as well as the defence case was discussed by the learned Sessions Judge elaborately.

I have carefully perused the orders passed by the courts below and the other relevant materials on record. I have also gone through the depositions given by the parties. Having done so, I do not find any material illegality or irregularity in the concurrent findings entered by the courts below. There is no merit in the contentions raised by the petitioner. Revision petition fails and it is accordingly dismissed.

(A.K.BASHEER, JUDGE)

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